

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
CPOWER, INC. FOR AUTHORITY TO) CAUSE NO. 43641
ENROLL ELIGIBLE INDIANA RETAIL)
ELECTRICITY CUSTOMERS IN DEMAND) PREHEARING CONFERENCE
RESPONSE PROGRAMS OFFERED BY) ORDER
PJM INTERCONNECTION, LLC, AND TO)
OFFER AND PROVIDE RELATED) APPROVED: MAR 11 2009
SERVICES.)

BY THE COMMISSION:

David E. Ziegner, Commissioner

Loraine L. Seyfried, Administrative Law Judge

On February 6, 2009, CPower, Inc. ("Petitioner") filed its petition with the Indiana Utility Regulatory Commission ("Commission") in this matter. Petitioner also filed a Motion for Clarification/Instruction ("Motion") seeking clarification and instruction from the Commission concerning the necessary approval for Petitioner's participation in demand response programs offered by PJM Interconnection LLC ("PJM").

On February 11, 2009, Indiana Michigan Power Company ("I&M") filed its Petition to Intervene, which was granted by Docket Entry on February 20, 2009. On February 16, 2009, I&M filed its Response in Opposition to Petitioner's Motion asserting that (1) the Motion fails to set forth sufficient factual and legal support for the relief requested, and (2) the issues raised in the Motion are currently pending before the Commission in Cause No. 43566.

On February 23, 2009, Petitioner filed its Reply asserting that the Commission's investigation in Cause No. 43566 does not preclude it from filing a separate petition seeking authority to participate in PJM's demand response programs and that Petitioner is merely seeking the Commission clarify its current regulation over demand response resources.

Pursuant to notice and as provided for in 170 IAC 1-1.1-15, a Prehearing Conference in this Cause was held in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana at 10:30 a.m. on February 26, 2009. Proofs of publication of the notice of the Prehearing Conference have been incorporated into the record and placed in the official files of the Commission. The Petitioner, I&M and the Indiana Office of Utility Consumer Counselor ("Public") appeared and participated at the Prehearing Conference. No members of the general public appeared.

Prior to the opening of the record and with the consent of all parties in attendance, an informal discussion was held regarding procedural and scheduling matters in this Cause. The parties could not reach agreement on a procedural schedule to be established in this Cause. At the Prehearing Conference, Petitioner indicated that it was seeking an order authorizing it to enroll

eligible Indiana retail electricity customers in PJM's demand response programs. Petitioner further indicated that such an order would need to be issued by April 17, 2009 for the Petitioner to be able to participate during the summer of 2009 provided that the Federal Energy Regulatory Commission ("FERC") approves PJM's request to extend the registration deadline from March 3 to May 1, and that the earliest date by which Petitioner could prefile testimony in this Cause would be March 9, 2009. I&M and the Public expressed concern with establishing such an expedited schedule that would be necessary to consider Petitioner's request and indicated that such a schedule would not allow adequate time to appropriately address and respond to issues raised by Petitioner's filing in this Cause. The parties agreed that if the Commission determined an expedited schedule could not be established so as to allow for issuance of an order by April 17, 2009, then the parties wished to delay establishing a schedule in this Cause until issuance of an Order in Cause No. 43566.

Since the time of the Prehearing Conference, Petitioner has filed a Submission further clarifying its request for an expedited, interim order. I&M filed a Response indicating the same concerns expressed at the Prehearing Conference continue to exist despite Petitioner's clarification of its request.

The Petitioner, as an intervenor in Cause No. 43566, has, or should have, been aware of the Commission's regulatory process for reviewing and approving participation by Indiana end-use customers in PJM's demand response programs since at least the filing of its intervention on October 10, 2008. In addition, as we noted in our February 25, 2009 Order in Cause No. 43566, the registration deadlines for PJM's demand response programs have not changed since the previous year. However, Petitioner waited to file its petition, without any supporting prefiled testimony, until just one month prior to PJM's registration deadline.¹

Although the Commission's February 25, 2009 Order in Cause No. 43566 indicated that the Commission would be willing to consider establishing expedited schedules for reviewing petitions filed by Indiana end-use customers seeking approval to participate in PJM demand response programs for the summer of 2009, Petitioner is not an Indiana end-use customer. Instead, as indicated in its Petition, Petitioner is a provider of demand response, energy efficiency, and other energy management services seeking to aggregate Indiana retail electricity customers for participation in PJM's demand response programs. Consequently, as noted by I&M and the Public, Petitioner's filing raises additional issues not previously presented or considered by the Commission in other filings by Indiana end-use customers seeking to participate in PJM's demand response programs.

Based upon discussions with the parties at the Prehearing Conference and after further consideration, the Commission finds that a procedural schedule which affords the parties adequate time to address the issues presented and allows for issuance of an order by April 17, 2009 cannot be established. Therefore, in accordance with the parties' agreement at the Prehearing Conference, this

¹ We note that at the time of the issuance of this Order, we are unaware of any FERC ruling on PJM's request to extend its demand response program registration deadline from March 3, 2009 to May 1, 2009.

matter will be held in abeyance pending the Commission's issuance of an order in Cause No. 43566 or until further request of the parties.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

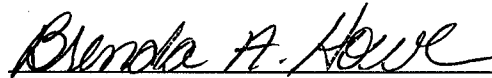
1. The determinations of the Prehearing Conference set forth in this Order are made a part of the record in this Cause and shall be binding on all present and future parties of record during the proceedings of this Cause.

2. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, SERVER, AND ZIEGNER CONCUR:

APPROVED: MAR 11 2009

I hereby certify that the above is a true and correct copy of the Order as approved.



Brenda A. Howe
Secretary to the Commission